UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, DISTRICT 70 AND LOCAL LODGE 839 (SPIRIT AEROSYSTEMS), **Case 14–CB–133028**

and

RYAN KASTENS, An Individual

and

SPIRIT AEROSYSTEMS,

Michael Werner and *Julie Covel, Esqs.,*
for the General Counsel.
Rod Tanner and *Matthew J. Pierce, Esqs.,* of
Fort Worth, Texas, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Wichita, Kansas, on February 19–20 and 26–27, 2015. Ryan Kastens, filed the charge on July 18, 2014,[1] and the General Counsel issued the complaint on November 26, 2014. The complaint alleges that the International Association of Machinists and Aerospace Workers, AFL–CIO, District 70 (District 70) and Local Lodge 839 (collectively referred to as the Union) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) by threatening Ryan Kastens with bodily harm and by threatening to impede his efforts for reinstatement by Spirit Aerosystems (the Company); violated Section 8(b)(1)(A) and (2) by attempting to cause and causing the Company to discharge Kastens and Jarrod Lehman; and violated Section 8(b)(1)(A) by discriminatorily processing Kastens' grievances against the Company.[2]

[1] All dates are in 2014 unless otherwise indicated.
[2] 29 U.S.C. §§ 158(b)(1)(A) and (b)(2).

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Union, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Company, a corporation, is engaged in the manufacture and nonretail sale of components for commercial, military and business aircraft at its facility in Wichita, Kansas, where it annually sells and ships goods valued in excess of $50,000 directly to points outside the State of Kansas. The Union admits, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local Lodge 839 and District 70 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Union

Local Lodge 839 (Local 839), a local labor organization within the jurisdiction of District 70 of the International Association of Machinists and Aerospace Workers, AFL–CIO (the IAM), is the exclusive bargaining representative of approximately 7,000 hourly-rated production and maintenance employees at the Company's facilities in Wichita.[3] The term of the current collective-bargaining agreement (CBA) between Local 839 and the Company is effective from June 2010 to June 2020.[4]

District 70 and Local 839 jointly administer the CBA.[5] President and Directing Business Representative Frank Molina is District 70's presiding officer. Other District 70 officials include Becky Ledbetter, the assistant directing business representative, Secretary-Treasurer Lynne Strickland, six business representatives, and two organizers. In addition, Local 839 stations two in-plant representatives within the Company's facility, Tim Johnson (first shift) and Howard Johnson (second shift).

B. The Company Rules and Policies at Issue

There are several company rules and policies at issue in this case. The Company's "Acceptable Use Policy" prohibits the dissemination of "Spirit information to parties outside Spirit, unless authorized by" appropriate personnel.[6] It also prohibits employees from using personal e-mail in a manner that "does not adversely affect the company or its public image or that of its customers, partners, associates or suppliers."[7]

[3] Jt. Exh. 1 at 11.
[4] Id. at 117.
[5] Id. at 10.
[6] Jt. Exh. 11 at 7.
[7] Id. at 15.

The Acceptable Use Policy specifies that "sensitive and proprietary information" may only be transmitted within the Company's secure server and prohibits the transmission of such information through "public e-mail systems" such as "Gmail, yahoo, hotmail."[8] The policy also informs that unauthorized access or misuse of company computer systems will subject an employee to disciplinary action.[9]

A more general policy restricts the release of any company-related information outside of the Company. It applies to any company information released through any medium, including "audio or video recordings and transmissions; photo or video; printed documents; e-mail; and the Spirit Web, the World Wide Web, or similar electronic networks." Information excepted from the policy must be reviewed by appropriate personnel and determined not to have a risk of adversely affecting any of the Company's interests.[10]

The Company's e-mail policy prohibits the release of company information via electronic mail to external recipients, any information that would embarrass the Company, and auto-forwarding electronic mail or transmission of chain emails.[11] Furthermore, any sensitive business or company brand information sent via electronic mail must be encrypted.[12]

Another company policy frowns on the use of personal cameras in the workplace: "Possession of non-Spirit camera-enabled devices may be allowed in some areas by local management or policy, but in all cases a Camera Permit is required to use the camera feature. Employees or visitors must not use the camera feature of devices on Company premises unless authorized to do so in accordance with company procedures."[13]

The violation of any of the aforementioned rules and policies subjects employees to the Company's progressive disciplinary policy. The initial action is a verbal counseling with written documentation. The next step is the issuance of a written warning. The third step is suspension with or without pay. The final step is termination.[14] Policy exceptions warranting termination for a first offense, however, include: "L. Unauthorized disclosure of Company trade secrets and private or confidential information to employees, customers, friends, relatives, general public or new media or making unauthorized representations by speaking on behalf of the Company;" and "M. Generally unacceptable conduct where the employee had accumulated four disciplinary actions within a year, and received a fifth disciplinary action for any reason during the year following the fourth disciplinary action."[15]

[8] Id. at 15.
[9] Id. at 6, 14.
[10] Jt. Exh. 13.
[11] Jt. Exh. 12 at 1-2.
[12] Id. at 4.
[13] Id. at 5.
[14] Jt. Exh. 14.
[15] Id. at 7.

C. Jarrid Lehman

Lehman was employed by the Company as an underwing mechanic from October 26, 2007 until his termination on March 6. He had no disciplinary record prior to February 2014. Lehman also served as Local 839's president and vice president. Following an appointment by Molina's predecessor, Steve Rooney, Lehman served as a joint partnership advocate, where he reported to the business representative, first Rooney and then Molina. Lehman served as a steward for Local 839 from 2008 until 2011, and during this period he worked directly with Howard Johnson as the in-plant representative. The relationship was fairly contentious. During the local elections in June 2013, Lehman ran on a slate with Rooney. Rooney was opposed by Molina for the position of business representative, while Lehman ran against Howard Johnson for the in-plant representative position.[16] Molina and Johnson prevailed in the election and Lehman was the odd-man out. He retained his position as joint partnership advocate, but resigned shortly thereafter when it became evident that Molina was not interested in communicating with him.[17]

D. Ryan Kastens

1. Kastens employment history with the Company

Ryan Kastens was employed by the Company from January 8, 2010, until March 5, first as a sheet metal mechanic and later as a fuel cell sealer. Kastens racked up a significant disciplinary history prior to 2014. In 2013 alone, he was disciplined on four occasions.[18] On March 14, 2013, the Company issued Kastens a verbal warning for parking in a no-parking zone and failing to display his parking pass.[19] On May 6, 2013, Kastens received a written warning for repeating the same infraction.[20] On November 8, 2013, the Company suspended Kastens for 3 days for an unexcused absence after he failed to return the next scheduled workday after attending approved union training in Maryland. That warning indicated that any further and similar incidents would result in discipline, including termination.[21] On December 6, 2013, Kastens was disciplined for misusing company time and misrepresenting himself as a union steward in investigating an issue in the shop area.[22]

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[16] Lehman's credible explanation of his rocky relationship with Johnson was not disputed. (Tr. 233–240.) Moreover, the General Counsel's unopposed motion to correct the transcript to reflect that Johnson called Lehman a cocky little shit instead of a "coffee" little shift, is granted. (Tr. 235.)

[17] Molina's uncorroborated assertion that Lehman was fired by Rooney and then appointed by Molina, denied by Lehman, was not credible (Tr. 103, 124.) To the contrary, I credit Lehman's assertion that Rooney, who he supported and ran for office with, did not fire him. (Tr. 236-238.)

[18] Kastens conceded the 4 disciplines in 2013. (Tr. 195; Jt. Exhs. 2-5.)

[19] Jt. Exh. 10 at 5.

[20] Id. at 4.

[21] The Union's focus on Kasten's attempts to elicit letters from Molina and Ledbetter falsely representing his time away on union-related work, while not denied, bear little relevance to the ultimate issue of representation in 2014. Jt. Exh. 2–3; Tr. 103–111, 128–132, 348–352.)

[22] Jt. Exh. 4.

2. Kastens relationship with Local 839

Kastens was an active member of Local 839 while employed by the Company. He served as a union steward in 2012 and held positions on various union committees. Prior to 2014, Kasten had no issue with the quality of his union representation. This included service from Howard Johnson who intervened with the Company on Kastens' behalf on two occasions and persuaded management not to discipline Kastens for poor work performance.[23] Molina also came to Kastens' assistance after he received a disciplinary notice on December 6. In that case, Molina convinced Company Manager Robin Ketterman not to discharge Kastens for misconduct and convert it to a 3-day disciplinary suspension which stated, in pertinent part:

> Upon receipt of this 4th Disciplinary Memo, if you receive any type of discipline in the next 12 months, you will be terminated for generally unacceptable misconduct.[24]

Kasten's relationship with District 70 leadership began to sour, however, in November 2013 when he accompanied Karen Ascension, a vice presidential candidate in the upcoming IAM International election, to a union meeting to speak on behalf of the reform candidates. Ascension was running on the national reform slate in the upcoming election, along with Jay Cronk, who was challenging incumbent International President Thomas Buffenbarger. Ascension encountered hostility, however, from Howard Johnson, who harassed her in an attempt to curtail her presentation. Kastens attempted to have Johnson removed, but to no avail. Following the meeting, Kastens met with Molina and complained about Johnson's behavior.[25]

By December 2013, Molina and Kastens argued over the latter's criticism of District 70's organizing policies and support for the International slate of reform candidates. Kastens initially denied campaigning for Ascension when asked by Molina, but Molina continued to press Kastens about his rumored support for the opposition. Kastens capitulated several weeks later, professed his support for the reform candidates and insisted he would not be swayed.[26]

E. Kastens' and Lehman 's Suspension and Discharge

On January 27, Lehman received a company e-mail with a subject line that read, "Why you should always look both ways." Attached was an approximately 2-minute video of a collision on December 26, 2013, between a truck and a company scooter on the street directly adjacent to the Company's entrance and parking lot.[27] Lehman then sent the e-mail from his work account to nine different e-mail addresses, including two non-company e-mail addresses.[28] One of the employees who received Lehman's email, Kastens, forwarded the e-mail and attached the video to an additional 71 e-mail addresses with a comment, "Wonder why those of us here at spirit never heard about this. . . ." Sixty of those e-mails were to Company e-mail addresses; 11

[23] Kastens service with and past representation by the Union is not disputed. (Tr. 126–127, 301–303.)

[24] Kastens signature on the document, however, did not indicate his assent. (Jt. Exh. 4.)

[25] Based on their subsequent actions toward Kastens, I have no doubt that Molina conveyed this complaint to Howard Johnson. (Tr. 153–155.)

[26] Molina did not deny criticizing Kastens over his support for the reform slate, but conceded that Kastens had become an outspoken critic of District 70 leadership. (Tr. 88–89, 156–157. 205.)

[27] From whom Lehman got the security department video was never established. (Jt. Exh. 20.)

[28] GC Ex. 8 at 5.

e-mails were non-company e-mail addresses. Unfortunately, one of those recipients was Betty Ledbetter, the Union's assistant business representative.[29]

Only 2 weeks earlier, Ledbetter sought to have Jeff Clark, a Company's labor relations manager, investigate Kastens' computer usage.[30] So it was not surprising, 2 hours after receiving Kastens' email on January 27, that Ledbetter forwarded Kastens' e-mail to union employees Howard Johnson, Jason Baze, and Kenneth Tullis. Ledbetter's e-mail to Johnson and Baze had no message,[31] but she did include one in the e-mail to Tullis, the Union's first shift safety representative, asking him to call her to discuss the video.[32]

About 2 hours after receiving Ledbetter's e-mail, Howard Johnson forwarded it to Jeff Black, the Company's senior manager of labor relations.[33] Johnson's e-mail stated that "[w]e were told that this video shouldn't have been released. . . . im getting calls about this, people are forwarding this message internally as well as outside spirit. What is the deal with this video?" Black forwarded Johnson's email to Lisa Atcheson, the Company's senior manager, on January 28. On the same day, she directed the Company's security department to investigate.[34]

On February 13 and 14, the Company suspended Kastens and Lehman, respectively, pending an investigation into the disclosure of the video. On February 14, Lehman filed a grievance through in-plant representative Timothy Johnson. Lehman also communicated with Betty Ledbetter, who denied any knowledge about the suspension, but said she would find out why he was suspended.[35] On the same day, Molina provided Clark with social media comments and photographs posted by Lehman and Kastens on February 10. The comments, which included a comment by Lehman, "Let

[29] The distribution of the emails by Lehman and Kastens, as well as Lehman's knowledge that the video originated from a Company security camera, is not disputed. (Tr. 150, 194–195, 249–259; GC Exh. 8 at 3–5; GC Exh. 24.)

[30] Betty Ledbetter's credibility was significantly diminished after she denied any previous effort to have the Company investigate Kastens' computer history and was impeached by her January 13 e–mail to Clark making such a request. (Tr. 377–379; GC Exh. 23.)

[31] I also did not credit Ledbetter's testimony that the purpose of her communication with Howard Johnson was to ask for his help to "get it off the floor." Aside from the fact that she did not call Kastens or Lehman to express concern over the e-mail, it is hard to imagine how one would get videos attached to e-mails already disseminated "off the floor." (Tr. 343; R. Exh. 12.)

[32] I do not credit Ledbetter's testimony that she received calls from an unspecified number of unit members to express concern about the video's dissemination. (Tr. 323–341; R. Exh. 12.) Reginald Maloney, the witness relied upon to make this point, was also not credible. He purportedly saw the email on someone else's computer, did not know who it was sent to, nor did he recall why seeing the video caused him concern. (Tr. 385–392.) The uncertainty of his testimony suggested that he was not motivated by concern, but other considerations when he communicated with Ledbetter.

[33] Johnson's testimony, that he did not review the e-mail and video attachment to ascertain that it originated with Lehman and was forwarded by Kastens, was utterly incredible. (Tr. 295–296; GC Exh. 8 at 2.) Their names were listed as the senders of the e-mails. Nor do I credit his uncorroborated testimony that unspecified individuals called him concerned as to why the video was circulated. (Tr. 291–292.)

[34] GC Exh. 8 at 1–2.

[35] Ledbetter did not deny Kastens' credible testimony about his conversation with her shortly after his suspension. (Jt. Exh. 15–16; Tr. 240–241, 265.)

me know if I needa go cut somebody!" were sent to Molina by Lynne Strickland, the Union's secretary/treasurer.[36]

Kastens, on the other hand, filed his grievance directly with the Union's District office. The following day, Molina sent Kastens a text message acknowledging receipt of the grievance and indicating that he would ascertain the basis for the suspension. Molina provided Kastens with that information the following week and assured him that he would contact him with any further developments.[37]

On February 24, Lehman was interviewed by a Company security employee and informed about the basis for the suspension. After being provided with a copy of his e-mail, Lehman provided a written statement detailing his receipt and forwarding of the videos. In the statement, he professed not to know where the accident occurred. However, in a subsequent statement provided to an NLRB investigator, he described the location of the accident.[38]

On February 25, Kastens was interviewed by a company security employee and also informed about the basis for his suspension. Kastens admitted that he sent the video to numerous employees and 11 others non-company e-mail accounts.[39]

On March 3, a company security employee interviewed Lehman again by telephone, this time regarding his February 10 Facebook postings and photograph. Lehman acknowledged posting the question as to whether he needed to cut somebody, but insisted it was meant merely as a figure of speech and was not work-related. While the photograph in question no longer appeared in his Facebook account, he did not deny taking one of himself in the Company's facility in violation of company policy.[40]

In essence, neither Kastens nor Lehman presented a plausible explanation to the Company as to violation of its privacy, computer and camera use, and security policies.[41] Accordingly, on March 5, the Company discharged Kastens based on his forwarding of "an e-mail external to the Company with contained a Spirit video," coupled with his "last chance"

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[36] Molina's testimony on the Facebook issue was not credible. He testified that he initially received copies of incriminating Facebook posts by Lehman and Kastens from the Company. (Tr. 62–64, 67–71; Jt. Exh. 17.) However, the February 14 e-mail from Strickland to Molina establishes that Clark obtained the information from the Union. (GC Exh. 14.) Moreover, the e-mails between Molina and Clark reveal a collaborative effort to mask the Union's role as the source of the information. (Id.)

[37] Kastens' lack of confidence in Timothy Johnson's ability to handle past grievances is of little significance since the Union did not question his decision to file directly with Molina. (Jt. Exh. 6; Tr. 143–148.)

[38] The discrepancy is noted, but was due to knowledge acquired by Lehman between the time he spoke with company security and a Board investigator. (GC Exh. 20; Tr. 241–244, 250–252.)

[39] Kastens was credible regarding his role in the e-mail's dissemination. (Tr. 149–150; GC Exh. 2.)

[40] While maintaining that he meant the remarks about cutting someone in jest, Lehman did not deny the irresponsible nature of that communication. (GC Ex. 11, 13 at 3; Jt. Exh. 12; Tr. 245, 263–264.)

[41] Neither Kastens (Tr. 195–197.) nor Lehman (Tr. 268–270.) disputed the credible testimony of company officials Justin Welner (Tr. 514, 517.) and Jason Neal (Tr. 279–280.) that the forwarding of the accident video and the taking of a "selfie" photograph in the workplace violated the Company's rules and policies relating to privacy and security concerns, and subjected to them to outright termination.

suspension 3 months earlier'[42] The Company discharged Lehman the following day. Lehman's discharge was also based on the "external" forwarding of the Company video," coupled with his posting of the picture taken inside the facility.[43]

F. The Union's Disposition of Kastens' and Lehman's Grievances

Kastens and Lehman each filed a grievance challenging his suspension.[44] Both called Molina to inform him that they had been suspended for violating company policies. Molina had several discussions with Lehman and Kastens throughout the Union's investigation and processing of their suspension grievances. At the outset, the Company informed Molina only that the suspensions were related to an email. Molina conveyed this information to Kastens and Lehman in the week following their suspensions, and assured them he would follow up once he received more details. After the Company concluded its investigation and discharged Kastens and Lehman, their suspension grievances were converted to discharge grievances.

Molina initially assigned Timothy Johnson to handle the grievances.[45] He represented Kastens and Lehman during their interviews by company security personnel, attempted to settle the grievances, albeit unsuccessfully, and documented his efforts.[46] Timothy Johnson concluded his role in the process by referring Kastens' grievance to Molina for further action:

> I am referring this grievance to you and your staff for review. According to the grievance procedure, this grievance has been discussed at Step Two of the procedure and was not settled. I have made attempts to settle this grievance, as In-Plant Representative; however, I am now forwarding this grievance to your office.[47]

As requested, Molina assumed responsibility for processing Kastens' and Lehman's grievances while they were still suspensions. Molina met with Kastens on or about February 27 and sent written information requests to Jeff Clark on behalf of Kastens and Lehman.[48]

Molina subsequently met with Clark and received the requested information about the investigations.[49] After receiving the information, Molina reviewed District 70's records of past arbitration decisions concerning last chance agreements, but did not find favorable precedent.[50]

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[42] Jt. Exh. 7.

[43] Jt. Exh. 9.

[44] Jt. Exh. 6, 16.

[45] The other in-plant representative and Kastens' nemesis, Howard Johnson, testified that he was not involved in the handling of either grievance. There was no credible evidence to dispute that contention. (Tr. 98–99, 298–299, 507.)

[46] Molina's account of his discussions with Kastens during this time (Jt. Exh. 15; Tr. 545–548, 551–553, 561–562, 567.) was not disputed by the latter. (Tr. 147–148, 578.)

[47] Jt. Exhs. 5 at 3, 19.

[48] It is not disputed that Molina also submitted an information request around the same time on Lehman's behalf. (GC Exh. 7, 9; Tr. 36–42, 87, 548–550.)

[49] GC Exhs. 13, 17.

[50] Molina mischaracterized the nature of Kastens' situation, however, since the December "last chance" suspension was not agreed to by Kastens. Therefore, the November and December 2013 suspensions were still active grievances. (Tr. 73–74, 97, 114–116, 554–555; R. Exh. 11.)

Molina also consulted with Thomas Hammond, an experienced labor and employment attorney who handles most of the Union's arbitration and litigation, sometime prior to April 1. Hammond, who was familiar with the CBA, was provided with copies of the disciplinary and grievance forms, the e-mails at issue ("Proprietary Spirit"), and the Company's e-mail and computer use policies. Conspicuously missing from the documents, however, were copies of Kastens' November and December 2013 suspensions and related grievances upon which his termination was based. Hammond's legal opinion was not reduced to writing, by e-mail or otherwise.[51]

During the time that he handled the termination grievances of Kastens and Lehman, Molina had several telephone conversations and exchanged text messages with Kastens. However, Molina's responses or explanations were brief and he sought to keep Kastens out of the loop. A striking example of Molina's approach was evidenced by his March 8 email directing the Union's district office staff not to release any paperwork from his file without Molina's approval. Although he replied to some of Kastens' text messages with brief, perfunctory responses, Molina never met with Kastens to discuss the handling of his grievance.[52]

By late March or early April, Molina, and without consulting Kastens,[53] proceeded to negotiate cash settlements with Clark for Lehman and Kastens in lieu of reinstatement. He did this even though Kastens, on April 2, asked him via text: "How long do u expect it to take fighting the company on my case.[54] Molina initially requested a $50,000 cash settlement for each, but ultimately agreed on May 16 to a $5,000 cash settlement for Lehman and $2,000 for Kastens.[55] At the Union's request, the Company agreed to modify the agreements to eliminate the need for releases signed by Kastens and Lehman.[56] After signing the settlement and release, Molina sent the settlements and checks to Kastens and Lehman by mail on May 23.[57]

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[51] Hammond and Molina were not credible regarding their consultation about Kastens' termination and grievance. Molina did not send Hammond copies of the November and January grievances, which were still active. Accordingly, Hammond mischaracterized Kastens' December 6, 2013 discipline as a "last chance agreement;" when it was not. (Tr. 74, 85–87, 91–92, 96–97, 483–488, 492–505, 509, 552–555; R. Exh. 6; Jt. Exh, 4.)

[52] I credited Molina's concern about Kastens "advertising everything he did online" as a reason to control the release of information to him. (Tr. 44–45, 548–549, 553–554; GC Exh. 10.) Moreover, Kastens conceded that they did exchange telephone calls and text messages early on. (Tr. 575–576.) On the other hand, Molina's tight control of Kastens' file corroborates the latter's credible and detailed testimony over Molina's vague and uncorroborated assertion that he kept Kastens adequately updated throughout the grievance process. (Tr. 151–153, 199–200, 559–560, 572; GC Exh. 3.)

[53] I based this finding on Kastens' credible testimony that Molina never consulted him before settling the grievance. (Tr. 186.) Kastens' conceded that he changed cellular telephone service in March and did not get some earlier texts from Molina. (Tr. 146–147.) Molina's vague testimony, however, reveals that he made no meaningful effort to communicate with Kastens prior to remitting the check. (Tr. 558.)

[54] GC Exh. 3 at 2.

[55] Given the complicity between Clark and Molina over Lehman's "selfie" photographs, I did not credit as reliable Molina's hearsay testimony about conversations with Clark, a labor relations manager, that the Company was steadfast in refusing reinstatement for either Kastens or Lehman. (Tr. 73–78, 99–102, 562–563, 569–570; GC Exh. 15 at 1–4; R. Exh. 11.) Clark did not testify. Instead the Union called Justin Welner, the Company's vice president for human resources. Welner credibly testified that he was not involved "in any of the events forming the basis of this proceeding," (Tr. 512.) describing his knowledge of the controversy as a "30,000-foot view of why they were terminated." (Tr. 515.)

[56] It was evident from Clark's e-mail to Molina that the Company sought to minimize potential future

Prior to agreeing to the settlements, Molina contacted Lehman about the proposed settlement. Having already taken another job in Texas, Lehman concurred with Molina's recommendation to accept the Company's cash settlement of his grievance.[58]

Kastens, on the other hand, contacted Molina after receiving the check and asked for an explanation. Molina explained that it was cash settlement of his grievance and arbitrating the case would be a waste of time because Kastens signed a last chance agreement in connection with his previous discipline. Kastens disagreed, asserting that it was not a last chance agreement. Molina maintained that he would not arbitrate the grievance. Kastens expressed disappointment with that result and hung up the telephone. He did, however, deposit the Company's check into his account.[59]

G. Kastens altercation with Howard Johnson on April 11

In the course of Kastens' termination grievance being processed by the Union, he refused to lie low and embroiled himself in the IAM's 2014 International elections of officers. The elections were held on different dates among the various districts. The Company's Local 839 members were scheduled to cast their votes at the Wichita Union Hall on April 12. Although discharged by the Company several weeks earlier, Kastens continued to support the national slate of opposition candidates. During the afternoon on April 11, the day before the Local 839 vote, he accompanied Cronk, the opposition candidate for IAM international president, to campaign outside of the Company's facility. Cronk and Kastens stood on opposite sides of the street outside the main entrance to the facility in order to engage employees entering and leaving during shift changes.[60]

Kastens and Cronk were handing out campaign literature for at least an hour when Becky Ledbetter, in-plant representative Howard Johnson and District 70 organizer Juan Eldrige arrived in a vehicle and began distributing campaign materials. Ledbetter approached Kastens and spoke to him. Eldridge and Johnson stood on the opposite street corner in close proximity to Cronk. A short while later, three more District 70 officials, Steve Elder, Brent Allen and Austin Ledbetter arrived and supplemented the District 70 contingent.[61]

As he conversed with Betty Ledbetter, Kastens noticed Howard Johnson shouting at Cronk. Kastens immediately walked across the street, confronted Johnson and demanded that he stop bothering Cronk. As they proceeded to engage in a serious case of trash talk, Johnson defied Kastens by telling him to "shut up before I beat your ass" and he would see that Kastens was not reinstated by the Company. The comments did not cause Kastens concern for his physical well

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liability exposure by having Lehman and Kastens sign releases. (Tr. 76–79; GC Exh. 15 at 1–2.)

[57] It is not disputed that Molina sent a transmittal letter with the settlement check like the one to Kastens and received in evidence. (Tr. 80, 152; Jt. Exh. 8, 16 at 3.)

[58] Molina's testimony that he consulted with Lehman before settling his grievance for $5,000 was corroborated by Lehman. (Tr. 266–267, 554–-557.)

[59] I base this finding on Kastens' credible testimony. (Tr. 152–153, 185–186.)

[60] Their activity there was not disputed. (Tr. 157, 206–207, 355, 362, 430; R. Exh. 13, 13A.)

[61] I credited the testimony of Cronk and Kastens that they had already been campaigning for a while when Betty Ledbetter, Johnson and Eldridge suddenly pulled up. (Tr. 355, 360-362, 374-375, 402-403, 418-420, 429–430.)

being as he motioned to his chest and dared Johnson to hit him. They continued arguing a bit longer until District 70 joint partnership chair Austin Ledbetter interceded. The comments did convey the message, however, that Kastens' campaigning for Cronk would have repercussions regarding Kastens' pending termination grievance.[62]

Shortly thereafter, company security personnel arrived to find a tense situation. After calming everyone, they learned that Howard Johnson was complaining that Cronk and Lehman were not company employees and their vehicle should not be parked in the company lot. After further discussion with the security personnel, Cronk and Lehman left.[63]

The enmity between Kastens and Howard Johnson did not subside after that incident. Kastens, determined to keep Howard Johnson on the defensive, filed a petition, 3 days later, for a temporary restraining order. The petition was not opposed and Kastens obtained a final order of protection on May 1.[64] On the same day, Kastens revealed his motive for obtaining an order of protection in several social media postings:

> How ironic that on "labor" day, the court grants my restraining order against my labor rep (hojo).
>
> I filed a restraining order. Now I'm faxing to the DOL. I want him removed from office. He was out of line and I will not tolerate it. Assuming reform doesn't win and he's not fired on the spot anyway.
>
> Is that supposed to be mocking me? I would break his [Johnson's] hip it if made it that far. *Better to have the paperwork watching my ass.* I have my conceal carry. I'm not worried about him. I'm pushing his removal from office more than anything. He's a rep that was out of line and should not be representing our membership. (emphasis supplied)[65]

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[62] The testimony of Howard Johnson and the other Union witnesses as to what preceded Kastens' dare was not credible. Kastens was clearly upset, confronted and dared Johnson to hit him. It is also clear that Johnson was defiant in refusing to stop shouting at Cronk. However, it is not credible, as Howard Johnson asserted, that Kastens would tell Johnson to "hit me "and "take your best shot" unless it was preceded by something Johnson said. Moreover, it was evident that union witnesses who witnessed the altercation had a selective, partial memory as to what they heard. (T. 157–159, 189, 190, 193, 202, 207–209, 304, 306–307, 361–364, 404–412, 420–422, 424–426, 430–432, 434–435, 443–446.)

[63] The weight of the credible evidence indicates that security personnel informed Cronk and Kastens where they could campaign, but that they were escorted to remove their cars from the Company parking lot. (Tr. 160, 188, 210–211, 421–422, 432–433.)

[64] I received this evidence over the Union's objection solely for the purpose of showing that Kastens' filed charges against Howard Johnson. The court documents indicate that Johnson did not contest the charges, nor was there a hearing on the merits. (GC Exh. 4–5; Tr. 163–174.) However, Kastens' court filing counteracts the Union's point that Kastens never filed a report with the police or company security charging a threat by Johnson. (Tr. 192–193, 211, 475–477.)

[65] The posting was not meant by Kastens as a threat, as the Union suggests, but rather an attempt to publicize his latest gain in the effort to oust Howard Johnson from his union position. With respect to Kastens' comment that he was not worried about Johnson because he carries a concealed weapon, it was made in response to a comment by an unidentified person who posted, "I stand with the right to keep and bear arms." (R. Exh. 2; Tr. 194, 535.)

LEGAL ANALYSIS

I. Howard Johnson's Threats

The complaint alleges that Howard Johnson, an admitted statutory agent, threatened on April 11 to inflict Kastens with bodily injury and impede his termination grievances and efforts to be reinstated, all because he engaged in dissident union activity. The Union denies the allegations, insisting that it was Kastens who attempted to provoke an assault by Howard Johnson on April 11.

Unlawful conduct is that which tends to coerce or restrain employees of their rights, including, inter alia, the right "to engage in intraunion activities in opposition to the incumbent leadership." *Steelworkers Local 1397*, 240 NLRB 848, 849 (1979). As distinguished from union-employee coercion/restraint, union-member coercion/restraint is unlawful when it "impacts on the employment relationship, impairs access to the Board's processes, pertains to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or otherwise impairs policies imbedded in the Act." *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1418–1419 (2000).

The Board "does not consider lightly . . . threats of bodily harm even when made to one employee. See *YKK (U.S.A.,) Inc.,* 269 NLRB 82 (1984). A statement to shut up or have your behind beaten can reasonably be perceived as a threat. The fact that Kastens was obviously not intimidated by Howard Johnson's statement is of no consequence since the standard for evaluating lawfulness is an objective one. *Steelworkers Local 1397,* 240 NLRB at 849 (the test is not what was subjectively intended, nor whether any employee was, in fact, coerced or intimidated by the remarks, but rather, whether they tend to restrain or coerce others from exercising rights under the Act). See also *Electrical Workers Local 309,* 212 NRLB 409, 414 (1974) (unlawful threat where Union agent threatened another member, "[y]ou're not going to be around long enough . . . because I'm going to get you"). Howard Johnson's remarks also conveyed the message that the incident would have repercussions regarding Kastens' pending grievance. Such a statement was clearly unlawful. *Steelworkers Local 1397,* 240 NLRB at 849.

The Union's reliance on *Food & Commercial Workers Local 7R (Longmont Foods)*, 347 NLRB 1016 (2006), *Painters Local 446 (Skidmore College)*, 332 NLRB 445 (2000), and *Oil Workers Local 2-947 (Cotter Corp.)*, 270 NLRB 1311 (1984), is misplaced. Those cases relate to instances in which union-member threats issued in response to incumbent challenges and were found sufficiently coercive to fall outside of the 8(b)(1)(A) proviso affording union discretion in regard to intraunion discipline. That such threats were issued in response to protected activity does not, however, entail that the desire to inhibit such activity is a necessary prerequisite. Conduct which violates Section 7 is that which would reasonably tend to coerce or restrain union members in exercising their rights. See *Anheuser-Busch*, 339 NLRB 769, 769 (2003). As clarified in *Local 446*, a physical threat falls outside of the 8(b)(1)(A) proviso not because of its intent but rather because its nonspecific nature renders it reasonably susceptible to interpretation as not limited to internal union controls. 332 NLRB at 446.

The Union argues in the alternative, citing to *Clear Pine Mouldings*, 268 NLRB 1044 (1984), and its progeny, that even if Johnson did threaten Kastens, Kastens lost protection of the

Act by threatening Johnson. The general thrust of this argument is that if two individuals are threatening each other, then neither may claim protection of the Act. That argument also fails because I found that Kastens did not threaten Johnson.

Under the circumstances, the threats by Howard Johnson, a statutory agent, to cause Kastens bodily harm and impede his grievance processing and efforts to be reinstated by the Company, violated Section 8(b)(1)(A) of the Act.

II. Discharge

The General Counsel alleges that the Union discriminatorily caused the discharges of Kastens and Lehman by forwarding their emails of the accident video to company management. The Union contends that it did not cause their discharges because the Company's subsequent actions served as a nondiscriminatory superseding cause and, in any event, the Union would have taken similar action in any other instance since numerous unit employees were affected by the accident video.

Either directly or through its agents, a union acts unlawfully when it causes or attempts to cause an employer to discriminate against an employee in regard to any term or condition of employment. See *Good Samaritan Medical Center*, 361 NLRB No. 145, slip op. at 2 (2014) (union unlawfully caused employer to discharge an employee for rudeness at his new employee orientation after he disputed union delegate's presentation regarding applicable union shop requirements). A union which causes the discharge of an employee presumptively breaches its fair duty of representation. See *Acklin Stamping*, 351 NLRB 1263, 1263 (2007). Causation is demonstrated when the employee engaged in protected activity and the union had both knowledge of and animus towards such activity sufficient to be a motivating factor in the subsequent adverse action. See *Security, Police & Fire Professionals of America (SPFPA) Local 444*, 360 NLRB No. 57, slip op. at 6–7 (2014); *Paperworkers*, 323 NLRB 1042, 1044 (1997). Demonstrated causation acts as a restraint upon the individual employee's Section 7 rights. See *Town & Country Supermarkets*, 340 NLRB 1410, 1411 (2004); *Postal Workers*, 350 NLRB 219, 222 (2007).

A union may, however, rebut a demonstration of causation and the derivative presumptive breach of its duty of fair representation by showing that it would have taken the same action in the absence of the protected activity, i.e., that the action in question was necessary for the effective performance of the union's representative function. See *Teamsters "General" Local 200*, 357 NLRB No. 192, slip op. at 8–9 (2011) (citing *Transportation Management Corp*., 462 U.S. 393 (1983)); *Teamsters Local 456*, 301 NLRB 18, 22 (1991); *Glaziers Local 558*, 271 NLRB 583, 585 (1984).

Howard Johnson's alleged interest in the accident video's distribution was contrived and it is hard to imagine why employees would express concern about it to him instead of a Company supervisor or manager. In any event, he did not forward the video based on a union security clause, nor was a plausible bargaining unit interest articulated. Johnson forwarded it solely because of the Union's animus for Kastens and Lehman due to their union activity.

Additional evidence of union animus is evident from Betty Ledbetter's January 13 effort to have the Company review Kastens' computer usage, and Molina's emails to the Company forwarding Lehman's incriminating statements about the Company and an incriminating photograph taken by Lehman within the facility.

The Union relies on *NLRB v. Bakery Workers Local 50,* 339 F. 2d 324 (2d Cir. 1964), and *Palmer House Hilton*, 353 NLRB 851 (2009), for the proposition that there can be no violation of Section 8(b)(2) unless the alleged discrimination would be unlawful if performed by the employer of its own accord. Thus, argues the Union, the fact that the Company was not charged with acting discriminatorily toward either Kastens or Lehmans necessarily absolves the Union of any corresponding violation. The flaw in this argument is that it presumes that an employer acts as a neutral conduit in conveying a union's desired action. The ultimate question under Section 8(b)(2) is union discrimination vel non; subsequent employer discrimination is simply a compelling way of establishing the necessary causal link. However, the fact that an employer acts lawfully of its own accord does not mean that the union's instigation was itself lawful.

The evidence failed to reveal any legitimate connection between the Company enforcement of its policies governing the use of electronic mail and Howard Johnson's role in enforcing those policies. Relying on *Graphic Communications Local 1-M*, 337 NLRB 662, 673 (2002) (internal citation and quotation marks omitted), the Union stresses its duty to the safety and well-being of the unit as a whole, and contends that Johnson's action was therefore for the greater good, i.e., that it "was necessary to the effective performance of its function of representing its constituency." Outside of a union-security clause, however, causing or attempting to cause the termination of one employee for the greater good of the many is lawful only in those limited circumstances in which the individual employee actions actively undermine the union. See, e.g., *Philadelphia Typographical Union 2*, 189 NLRB 829 (1971) (employee embezzlement of union funds undermined the union); *Millwrights 1102*, 144 NLRB 798, 800–801 (1963) (employee-employer conspiracy to undermine the union).

Under the circumstances, the Union violated Section 8(b)(1)(A) and (2). Howard Johnson's forwarding of the accident videos to company management was reasonably likely to result in disciplinary action and was discriminatorily motivated by the protected activity of Kastens and Lehman. Under the circumstances, the Union failed to rebut the demonstrated causation and presumed breach of the duty of fair representation. See *Town & Country Supermarkets,* 340 NLRB 1410, 1411–1412 (2004); *Graphic Communications Workers Local 1-M (Bang Printing,* 337 NLRB 662, 664.

III. Grievance Processing

The General Counsel also alleges that the Union violated its duty of fair representation by processing Kastens' grievance in bad faith. The Union argues that it processed Kastens' grievances in good faith and settled them for nominal sums based on the Company's position and the unlikelihood of success on the merits.

A union breaches its duty of fair representation "when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v.*

Sipes, 386 U.S. 171, 190 (1967).[66] Demonstration of bad faith requires proof of fraud or deceitful or dishonest action. *Steel Workers*, 357 NLRB No. 48, slip op. at 2 fn. 6 (2011) (citing *Electrical Workers v. NLRB*, 41 F.3d 1532, 1537 (D.C. Cir. 1994)). Arbitrary conduct is not demonstrated through negligent processing of a grievance absent perfunctory handling or willful ignorance. See *Amalgamated Transit Local 1498*, 360 NLRB No. 96, slip op. at 2 (2014). Willfully keeping an employee ignorant in regard to the processing of their grievance violates the duty of fair dealing. See *Yellow Freight System of Indiana*, 327 NLRB 996, 996 (1999); *Groves-Granite*, 229 NLRB 56, 63 (1977). Perfunctory processing is demonstrated by favoring the employer's position without due consideration of either the employee's perspective or any precipitating event. See *Service Employees Local 579*, 229 NLRB 692 (1977).

The Union's failure to either communicate extensively with or to obtain a statement from Kastens during the grievance process is not dispositive. See, e.g., *Pacific Maritime Assn.*, 321 NLRB 822, 823–824 (1996). However, its processing of Kastens' claim in such a perfunctory manner was clearly arbitrary. See *Service Employees Local 3036(Linden Maintenance),* 280 NLRB 995, 996–997 (1986) (union abandoned grievance after assuring grievant that it was being taken care of and rejected employer's offer of reinstatement to part-time employment without notifying him); *Union of Sec. Personnel of Hospitals,* 267 NLRB 974, 980 (1983) (union abandoned grievance and conducted no investigation after initial discussion with grievant). Molina conferred briefly by telephone or text messages with Kastens several times after he was suspended in February. Over the next 2 months, however, there was an absence of communication between them. Meanwhile, any documentation by Molina of his efforts in connection with the February 14 grievance was nonexistent; in fact, the only record evidence produced revealed his focus on keeping Kastens uninformed. Indeed, Molina took that approach to an extreme by convincing a reluctant company manager to agree to a settlement without Kastens' signature.

It was only after Kastens received a company check in the mail for $2000 in May that he learned that Molina settled his February grievance. Kastens informed Molina of his disagreement and insisted he take it to arbitration. Molina explained that the deal had already been consummated, was based on a document he misconstrued as a "last chance agreement" and the unlikelihood of success in the grievance process. Kastens expressed disappointment with the settlement, rejected the notion that he was saddled by a "last chance agreement" and hung up the telephone.

Other evidence also indicates that the Union failed to exercise its discretion in good faith. In fact, the animus demonstrated by the communications of Molina and Howard Johnson with the Company leading to Kastens' discharge strongly suggest that the Union mishandled his grievances for invidious reasons. *See Bottle Blowers Local 106,* 240 NLRB 324, 324–325 (1979) (invidious motivation apparent from expressions of hostility by union officials, perfunctory investigation of grievance and agreement with employer's position instead of presenting charging party's position). Moreover, Molina's description of the Company's steadfast insistence on termination was undermined by Welner, the Company's top labor official, who explained that he had scant knowledge of Kastens' discipline.

[66] Contrary to the Union's assertion, a showing of animus is not a necessary element of an 8(b)(1)(A) claim.

Additionally, Molina treated two unresolved disciplines of Kastens, including a "last chance" suspension/warning," as a fait accompli on Kastens' record and the basis upon which to accept a nominal cash settlement of the termination grievance. Those previous disciplines, filed in November 2013 and January 2014, were referred to Molina, but never processed and were still active.

Finally, the Union contends that Kastens is barred by the defense of accord and satisfaction because he signed a release in favor of the Company and deposited the Company's check into his account. That defense also lacks merit. The Union was not mentioned in the release signed by Kastens. Nor can it claim such a defense as a third-party beneficiary. To qualify as a third-party beneficiary, a party must show that "the contracting parties clearly intended to directly benefit him." See *Radosevic v. Virginia Intermont College*, 651 F.Supp. 1037, 1038 (W.D.Va.1987). The Union offered no evidence suggesting that it was either an intended or incidental beneficiary of Kastens release agreement with the Company.

Based on the foregoing, the Union violated Section 8(b)(1)(A) by discriminatorily processing Kastens' February 2014 grievances.

CONCLUSIONS OF LAW

1. International Association of Machinists and Aerospace Workers, AFL–CIO, District 70 and Local Lodge 839 (collectively "the Union") are labor organizations within the meaning of Section 2(5) of the Act.

2. By attempting to cause and causing the Company to discharge Ryan Kastens and Jarrod Lehman on February 14, 2014, because of their dissident union activity and/or other protected concerted activities, the Union violated Section 8(b)(1)(A) and (2).

3. By threatening to cause bodily harm to Kastens on April 11, 2014, and impede his efforts to obtain reinstatement because he engaged in protected concerted activities, the Union, by Howard Johnson, violated Section 8(b)(1)(A).

4. By discriminatorily and/or arbitrarily processing Kastens' outstanding grievances against the Company, the Union violated Section 8(b)(1)(A).

5. The aforementioned unfair labor practices by the Union affect commerce within the meaning of Section 2(6) and (7) of the Act.[67]

REMEDY

Having found that the Union has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

[67] Based on the findings and conclusions that the General Counsel made a *prima facia* showing, as well as establishing the alleged violations, the Union's "Motion to Dismiss the Complaint as Amended is denied. (ALJ Exh. 1.)

The Union, having discriminatorily caused the discharges of Ryan Kastens and Jarrod Lehman, must make them whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[68]

ORDER

The International Association of Machinists and Aerospace Workers, AFL–CIO, District 70 (District 70) and Local Lodge 839 (collectively referred to as the Union), based in Wichita, Kansas, its officers, agents, and representatives, shall

1. Cease and desist from

Attempting to cause or causing Spirit Aerosystems to discharge employee-members because of their dissident union and and/or other protected concerted activities.

Threatening employee-members with bodily harm or impeding their grievances because of their protected concerted activities.

Discriminatorily and/or arbitrarily processing employee-members' grievances because of their protected concerted activities.

In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

Make Ryan Kastens and Jarrod Lehman whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

Within 14 days from the date of the Board's Order, request that Spirit Aerosystems (the Company) offer Ryan Kastens full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. If the Company refuses to reinstate Kastens, the Union shall request that the Company process the grievances over his suspensions and discharge, and pursue the grievances in good faith with due diligence, including permitting Kastens or another representative of his own choosing present at the grievance-arbitration proceedings at the Union's expense.

[68] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Within 14 days from the date of this Order, remove from our files any reference to the discharge of Ryan Kastens, and within 3 days thereafter, notify him in writing that we have done so and that we will not use the discharge against him in any way. If the Company agrees to reinstate Kastens before or after processing the grievances over his suspension and discharge, the Union shall also request that the Company remove from its files any reference to Kastens' discharge and notify him that this has been done and the discharge will not be used against him in any way.

Within 14 days after service by the Region, post at its union office in Wichita, Kansas copies of the attached notice marked "Appendix."[69] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Union's authorized representative, shall be posted by the Union's and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Union customarily communicates with its members by such means. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Union has gone out of business or closed its Wichita, Kansas office, the Union shall duplicate and mail, at its own expense, a copy of the notice to all current Union members and former members at any time since February 14, 2014.

Sign and return to the Regional Director sufficient copies of the notice for physical and/or electronic posting by the Company, if willing, at all places or in the same manner as notices to employees are customarily posted.

Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Union has taken to comply.

Dated, Washington, D.C. April 29, 2015

_____
Michael A. Rosas
Administrative Law Judge

[69] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT attempt to cause or cause Spirit Aerosystems to discharge you because you engage in dissident union and/or other protected concerted activities.

WE WILL NOT threaten you with bodily harm or impede the processing of your grievances because you engage in protected concerted activities.

WE WILL NOT discriminatorily and/or arbitrarily process your grievances because you engage in protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Ryan Kastens and Jarrod Lehman whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest compounded daily.

WE WILL, within 14 days from the date of the Board's Order, request that Spirit Aerosystems (the Company) offer Ryan Kastens full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. If the Company refuses to reinstate Kastens, the Union shall request that the Company process the grievances over his suspensions and discharge, and pursue the grievances in good faith with due diligence, including permitting Kastens or another representative of his own choosing present at the grievance-arbitration proceedings at the Union's expense.

WE WILL within 14 days from the date of this Order, remove from our files any reference to the discharge of Ryan Kastens, and within 3 days thereafter, notify him in writing that we have done so and that we will not use the discharge against him in any way. If the Company agrees to reinstate Kastens before or after processing the grievances over his suspension and discharge, the

Union shall request that the Company remove from its files any reference to Kastens' discharge and notify him that this has been done and the discharge will not be used against him in any way.

International Association of Machinists and Aerospace Workers, AFL-CIO, District 70 and Local Lodge 839

Dated _____ By _____
(Representatives) (Titles)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1222 Spruce Street, Room 8.302, Saint Louis, MO 63103-2829
(314) 539-7770, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/14-CB-133028 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 539-7780.